

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER M. KOBYLIVKER, SIMON K. OFOSU,  
SUSAN E. SHAWVER and ROGER L. LANCE

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Appeal No. 1997-1795  
Application 08/442,617

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ON BRIEF

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Before KIMLIN, WALTZ and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6-11 and 14, all the claims remaining in the present application.

Claim 6 is illustrative:

6. A nonwoven fabric comprising a web of bondable thermoplastic polymer fibers comprised of a biconstituent blend of from about 95 to 50 weight percent polypropylene having an isotacticity of at least 98 percent, and from about 5 to 50 weight percent of a

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random block copolymer of polypropylene and polyethy-lene having a melting point of below 160°C and having about 3 percent random ethylene molecules and about 9 percent block ethylene molecules.

The examiner relies upon the following references as evidence of obviousness:

Kunimune et al. (Kunimune)	4,211,819	Jul. 08, 1980
Gessner	5,108,827	Apr. 28, 1982
Canadian Patent Application (Canadian '014)	2,126,014	Jun. 16, 1994

Appellants' claimed invention is directed to a nonwoven fabric comprising a biconstituent blend of polypropylene having the recited isotacticity and a random block copolymer of polypropylene and polyethylene having the recited amounts of random ethylene molecules and block ethylene molecules.

Appealed claims 6-11 and 14 stand rejected under 35 U.S.C.

§ 103 as being unpatentable over Gessner in view of Kunimune or Canadian '014.

Upon careful consideration of the opposing arguments presented on appeal, we will not sustain the examiner's rejection.

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The examiner's conclusion of obviousness rests upon the erroneous finding that Gessner discloses random block copolymers

of ethylene and propylene at column 2, lines 1-6 and column 2, lines 55-56. Gessner, at column 2, lines 1-6, discloses the following:

a multiconstituent fiber having a fineness of 5 to 50 microns and up to 95 percent by weight of other fibers. Said multiconstituent fiber is composed of a highly dispersed blend of at least two different immiscible thermoplastic polymers and has a dominant continuous polymer phase and at least one noncontinuous phase dispersed therein.

Manifestly, the above-quoted portion of Gessner makes no reference to a random block copolymer of polypropylene and polyethylene. Also, the examiner's additional reliance on Gessner's disclosure at column 2, lines 55-56 is similarly wanting. Lines 55 and 56 of column 2 are part of a list of exemplary polymers that can be intimately mixed to form a blend of different polymers. Line 55 cites block copolymers of ethylene and propylene, whereas line 56 specifies random

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copolymers of ethylene and propylene. Hence, Gessner teaches that the polymer blend may comprise block copolymers and random copolymers, but this is not tantamount to a disclosure of a random block polymer of propylene and ethylene, i.e., a single copolymer having both random ethylene molecules and block ethylene molecules.

Consequently, since the examiner has factually misrepresented the disclosure of Gessner, and has presented no rationale why a blend of a block copolymer and a random copolymer would have rendered obvious appellants' random block copolymer, we cannot sustain the examiner's rejection.

Based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
THOMAS A. WALTZ	)	APPEALS AND

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Administrative Patent Judge )	INTERFERENCES
)	
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)	
CATHERINE TIMM )	
Administrative Patent Judge )	

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